IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. Nemi Chand Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.88/2006

2. Omprakash Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.148/2006

DATE OF ORDER :: December 11, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Sandeep Mehta for petitioner Nemichand.
Mr. Vijay Purohit for petitioner Omprakash.
Mr.Ashok Upadhyaya, P.P.

BY THE COURT:

Both these criminal misc. petitions under section 482 Cr.P.C. are directed against the order dt. 22.12.2005 passed by the learned Sessions Judge, Pali (for short 'the revisional court' hereinafter), whereby the revision petition filed by the present petitioners against the order dt. 1.10.2005 passed by the Additional Chief Judicial Magistrate (Communal Riots), Pali (for short 'the trial court' hereinafter), was dismissed. However, the

revision petition filed by other persons namely Dinesh Kumar, Mangilal and Labhchand was allowed and the order framing charge by the trial court against them was set aside.

I have heard learned counsel for the parties. Carefully gone through the order passed by the trial court as well as by the revisional court.

It is contended by the learned counsel for petitioner Nemichand that on the relevant date of occurrence, even according to the prosecution case, the petitioner was not at Pali but he was at Mumbai, even otherwise, no role has been assigned to the petitioner. It appears from the order impugned that co-accused Labhchand, who has been discharged by the revisional Court, wanted to purchase the stamp papers for the purpose of purchasing the property and for depositing the amount for purchase of non-judicial stamp papers, a challan was filed to deposit the amount in State Bank of Bikaner and Jaipur, Collector Branch, Pali. As per the challan, the stamp was to be purchased in the name of Labhchand s/o Tejraj through its authorized representative Prakash s/o Madan Lal. On the reverse side of the stamp, name of purchaser Labhchand for the purpose of selling the plot was endorsed. In challan register also, name of Labhchand was recorded but it appears that subsequently it

was revealed that the stamp was to be purchased for Nemi Chand through its representative Prakash and therefore, in place of Labhchand, name of Nemichand was entered in the challan register as well as on the reverse side of the stamp by the concerned clerk Om Prakash, who is petitioner herein. Petitioner Omprakash made the correction to this effect in challan register and on reverse side of the non-judicial stamp paper and wherever the correction was made either on the challan register or on the stamp, he signed as having corrected. It appears that subsequently, it was revealed by this correction that a loss to the State Revenue has been caused amounting to Rs.10,280/- for the reason that the stamp papers were for a sum of Rs.10,2800/- and if the stamp purchased in the name of Labhchand is not utilised and returned to the treasury, then 10% of the cost of the stamp will go to the State fund and by deducting 10% of actual cost, remaining amount would be refundable to Labhchand. Therefore, according to the prosecution, in order to save a sum of Rs.10,280/-, the correction was made in the stamp papers and challan register. At any rate, so far as petitioner Nemichand is concerned, no role has been assigned to him for the acts noticed above. So fas as petitioner Omprakash is concerned, it appears that the loss occasioned to the State which in real sense may not be but yet petitioner Omprakash has deposited a sum of Rs.10280/- to the

State account but at any rate, it cannot be said that Omprakash has forged any document. Had the documents been forged, then there was no occasion for him for signing the correction made by him. He made the correction may be in bonafide belief that he being the authorised person to correct in the challan register as also in stamp papers but it cannot be said that he has forged the documents with dishonest and fraudulent intend to use as genuine. There is hardly any evidence of criminal conspiracy between petitioners Namichand and Omprakash as is evident from the material placed on record as petitioner Nemichand at the relevant time, was at Mumbai and was not in contact with petitioner Omprakash and, therefore, there is absolutely no evidence of hatching criminal conspiracy between two persons. So far as correcting the wrong entry and initialing and subsequently putting his own signature, it cannot be inferred that petitioner Omprakash had any criminal intend in doing so. Had there been any criminal intend, he would not have signed wherever he made correction.

In State vs. Parasram, AIR 1965 RAJASTHAN 9 (v 52 c 5), this Court held that under section 464 what is essential is that the accused person must make a document with the intention of making it to be believed that it was signed by or by the authority of some one else, while he knows that it was not so

made or authorised by that person.

Keeping in view the decision of this Court in State vs. Parasram (supra) and the material available on record, in my view, there is no sufficient material on the basis of which, it could be presumed that both the petitioners committed the offence noticed above. Even the evidence sought to be produced by the prosecution remained uncontroverted, it cannot be said that the offence alleged can be said to have established. In the circumstances, therefore, charge framed against the petitioners cannot be sustained and is liable to be set aside.

In the result, both the criminal misc. petitions are allowed. Orders impugned to the extent framing charge against both the petitioners are set aside.

[H.R.PANWAR],J.

m.asif/-